May 15, 2006

From: Larry and Cheryl Morgan
102 Hayward Rd.
Pullman, WA. 99163

To: DOE, Water Quality Program
P. O. Box 47696
Olympia WA. 98504

Attn: Karen Dinicola

Re: Public Comment on Formal Draft Phase II
Municipal Stormwater Permit for Eastern Washington

Dear: Washington State Department of Ecology's Water Quality Enforcement Personnel:

We are the residents and the landowners located within the lower reaches of the Hatley Creek Basin (HCB).

This letter is submitted to charge the Department of Ecology (DOE) for allowing inappropriate provisions, as set forth in Federal and State Laws, to protect the conservancy of our environment, to safeguard our life, health and our private property from significant negative impacts from the conveyance of off-site urban stormwater [sewer] runoff.

The upper reaches of HCB are developing at a rapid pace. On-site urban stormwater runoff is collected in past and ongoing newly constructed stormwater [sewer] systems. These man made systems are owned and operated by the City of Pullman and/or the developers and serve as public utilities. **All urban stormwater** collected and conveyed through stormwater sewer systems are "**waters of the state".** All off-site urban stormwater [sewer] runoff flows locates in the upper reaches of HCB are currently being conveyed on/through our property via Hatley Creek.

Hatley Creek is a direct tributary to the South Fork of the Palouse River (SFPR).

The SFPR has been consistently listed on the DOE's 303(d) state list for impaired waters for several years. DOE will be starting studies of the SFPR Water Quality Improvement Project later this month.

Hatley Creek was historically fed by natural runoff and natural springs.
Conveyance of off-site urban stormwater [sewer] runoff have the known and documented effect of transforming Hatley Creek (an unnavigable stream) into an urban stormwater [sewer utility] system. Pursuant to the Clean Water Act this is an unacceptable designated use of Hatley Creek and of our private property.

RCW 90.22 provides for flows of "state waters" to protect "water quality". Likewise, as per RCW 90.22.040, the courts have recognized the historic right of livestock watering use upon riparian grazing lands and access to the natural streams and rivers on adjoining lands now or in the foreseeable future.

Our property has been in our family for close to 60 years. We have exercised our historic lawful right for access to Hatley Creek for livestock watering and plan to continue this practice in the foreseeable future, thus the off-site conveyance of untreated urban stormwater [sewer] flows to Hatley Creek are of great concern to us for the protection of our livestock as well as to our domestic pets, to human health and the over-all conservancy of our environment. Livestock and domestic pets require healthy water for their survival just as humans do.

In review of the proposed Phase II Stormwater Permit for Eastern Washington, it is of great concern that the proposed DOE Permit is not requiring the necessary mandates within this permit for the protection of the present and the foreseeable future significant degradation of Hatley Creek, as well as numerous other natural streams, from negative impacts created from off-site urban stormwater [sewer] flows.

S8.C.1 (pg. 40 of 52)Stormwater monitoring is not being required during this permit term.
How can DOE protect receiving waters from urban stormwater pollutants without required monitoring at the source (before releasing from detention ponds)? The permit must require all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards.

Core Element #4 : (pg.50 of 52) "Natural drainage patterns should be maintained and discharges from the project site should occur at the natural location to the maximum extent practicable".
If DOE is going to allow urban stormwater [sewer] runoff to convey "natural drainages", DOE must require a complete off-site basin study/analysis (regardless of the size of the basin). Without a required off-site basin study DOE:

1. **Would be breaching their standard of care to protect the public health and welfare and the over-all conservancy of the environment within that Basin.**
2. **Would be breaching their "police power" to identify streams and protect the "state waters" that are located within the basin for their use and enjoyment by the people living within the basin.**
3. **Would not be able to determine the cumulative stormwater flows pre-development and post-development.**
4. **Would be allowing a public stormwater[sewer utility] system to flow over private property located within the basin without easements. All public utilities require easements on or through private property.**

5. **Would be utilizing [unnavigable streams] located on private property for waste conveyance or treatment systems for off-site stormwater [sewer] runoff. This act is non-compliant of the CWA and numerous Washington Water Laws.**

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DOE must acknowledge that urban stormwater runoff is no longer in its natural state. Urban stormwater is man made or man induced alteration of the chemical, physical, biological integrity of water, thus it is a known and documented pollutant and the conveyance of this waste water becomes a public utility. Urban stormwater [**sewer**] runoff is a more appropriate definition. The Cities and DOE need to stop dancing around this fact.

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***Find attached a copy of The Hatley Creek Storm Drainage Basin Study for your review. Perhaps this Study will convince DOE the importance of mandated Basin studies. A mandated analysis of a Basin is the only way to provide "out of the box" impacts and address the cumulative long-term impacts to water quality and water quantity mandates, thus providing the maximum protection required for the conservancy of the environment and public health and safety.

Core Element #4 (pg. 50 of 52) "Preservation of natural drainage systems provides multiple benefits for stormwater management".
This statement is a complete "joke"; in fact, the entire Core Element #4 is a complete "joke". For your information, preservation means to protect a restricted natural resource from destruction. Allowing urban stormwater [sewer] runoff to enter natural drainage systems allows for significant degradation of the natural resources located within the basin, thus placing people and their property in an unsafe environment. The continued significant flows soon turn the natural small streams and the once grassy swales located within the basin into simulated piping systems, thus offering very little if any filtering treatment to the pollutants of urban stormwater before the flows enter the SFPR. The residents living within the HCB can attest to this fact.
The local governments and the developers are the only ones to benefit from Core Element #4. It is a cheap way for the local governments and the developers to get rid of their waste. Just dump it on someone else, maybe they won't notice.

Core Element #5(pg. 50 of 52) "The most effective basic treatment BMPs remove about 80% of the total suspended solids…….In some cases, additional treatment to remove oil, metals, and/or phosphorus from stormwater runoff may be required to protect water quality…….The goal of this Core Element is to treat approximately 90% of the annual runoff generated by the pollutant-generating surfaces at a project site. The total quantity of pollutants removed from the stormwater will vary greatly from site to site **effectiveness of source control**……Proper operation and maintenance of the treatment facilities……..protecting receiving waters over the long term.

When site conditions are appropriate, [**infiltration] can potentially be the most effective BMP for runoff treatment.**

Core Element #6 (pg. 51 of 52) "The purpose of flow control is to mitigate to the maximum extent practicable the impacts of increased storm runoff volumes and flow rates on streams in eastern Washington. The intent of this Core Element is to prevent cumulative future impacts from urban runoff; the impacts of prior development and (or) flow modifications in eastern Washington are not addressed through this Manual."

"Whenever possible, infiltration is the preferred method of flow control for urban runoff. .....the cumulative effect of infiltrating urban runoff should have a neutral or possibly beneficial effect."

As noted in Core Elements # 5 & 6, infiltration is the most effective method of flow and treatment of urban stormwater. For your information, the soils in the Hatley Creek Basin exhibit low to moderate infiltration rates. Control of stormwater runoff via infiltration is not feasible in the basin. This is also true through-out Pullman which includes WSU. This fact would indicate that close to 100% of all of Pullman's and WSU's stormwater[sewer]runoff is conveyed to a natural waterway. Keep in mind that all of these natural waterways are direct tributaries to the SFPR.

Core Element #7(pg. 51 of 52) "Inadequate maintenance or improper operation is a common cause of failure for stormwater facilities…….To ensure that stormwater control facilities are adequately maintained and properly operated, projects are required to plan for and perform appropriate preventive maintenance and performance checks at regular intervals".

This requirement appears to be similar to the mandates of DOE's Stormwater Construction General Permit. The City of Pullman also has an ordinance requiring mandates to be followed for management of stormwater during construction. Both permits clearly state among other requirements, that sediments are to be [retained] within the boundaries of the construction site. Hatley Creek and the SFPR have been receiving significant "clay sediment" flows from development sites located in the upper reaches of the Basin for close to 8 years. The implementation of professionally engineered Stormwater Pollution Prevention Plans is proving to be a "political farce". These permits are simply not being enforced by the City of Pullman or DOE.

It appears that an enormous amount of enforcement of this proposed permit will be left up to our local government. The SEPA, Shorelines Act, Critical Areas Ordinance, Growth Management Act, Clean Water Act, etc. have proven to be a nothing more than a "political farce" at the local level. **Will this proposed permit join the ranks?**

It is of concern that this proposed permit only applies to new development and redevelopment, meaning that retrofit to correct existing problems is not required. This is not the case for rural land owners, existing problems must be corrected.

It is a well known fact that there are numerous un-identified and non-permitted pipes (direct source pollution) located within the City of Pullman as well as WSU that discharge directly into the SFPR or into tributary streams of the SFPR.

Currently DOE is using their "police power" mandating individual rural landowners to fence off waterways from livestock access to correct existing water quality problems.

The message DOE is sending within this proposed permit is that collectively (urban landowners/residents) can continue to pollute "state waters", but individually (rural landowners) must retrofit any existing water quality problems. This would constitute selective enforcement and perhaps discrimination towards rural land owners.

We are strong proponents for the protection of private property rights. We are also strong advocates for the protection of our natural ecosystem. Property rights and the protection of our natural resources depend on each other to ensure that our civilization is truly sustainable over time.

Because the City of Pullman has stated in the strongest of terms that the regulation of water quality enforcement is a DOE responsibility and not theirs, it is inherent that DOE enforce their "police powers" in the protection of Hatley Creek and our private property from the continued degradation from urban stormwater [sewer] runoff. It is unacceptable for the continued non-compliance of numerous Federal and State Laws by the City of Pullman allowing the transformation of Hatley Creek into an urban stormwater [sewer] system. All residents living within the lower reaches of The Hatley Creek Basin have the right of due process through DOE, and its chain-of command for the maximum protection practicable for the environmental integrity of The Hatley Creek Basin.

We reserve all rights under state and federal law, and by submitting this comment letter do not intend or imply to waive any rights nor should any such waiver be inferred.

Sincerely,

Larry Morgan

Cheryl Morgan

Attachment: Hatley Creek Storm Drainage Basin Study

cc: Governor Christine O. Gregoire
EPA
Sierra Club, Upper Columbia River Group